

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

THOMAS AVERY ALLEN, JR.,)	
)	
Petitioner,)	
)	
v.)	1:11CV1082
)	1:07CR409-2
UNITED STATES OF AMERICA,)	
)	
Respondent.)	

ORDER

On January 16, 2018, the United States Magistrate Judge's Recommendation was filed and notice was served on the parties pursuant to 28 U.S.C. § 636. [Doc. #199.] Petitioner did not file objections to the Recommendation. The Government filed timely objections [Doc. #209], but objected only to the proposed remedy set out in the Recommendation.

The Court has reviewed the Government's objections de novo and agrees that the first plea agreement offered to Mr. Allen is no longer valid under the Fair Sentencing Act; but, finds that the Government should allow Mr. Allen the opportunity to plead to the terms set out in the second proposed plea agreement.

Therefore, the Court adopts the Recommendation with modification, as set out below.

IT IS THEREFORE ORDERED that Petitioner's Motion [Doc. #120] to vacate, set aside, or correct sentence pursuant to 28 U.S.C. § 2255 is GRANTED to the extent that the Government is directed to reoffer the second proposed plea

agreement to Petitioner. This matter shall be set for a hearing as soon as practicable.

IT IS FURTHER ORDERED that Mark Edwards, having been previously appointed to represent Petitioner on February 12, 2015, for purposes of the evidentiary hearing, shall continue his representation of the Petitioner until such time as the matter is concluded, or he is allowed to withdraw.

This the 25th day of September, 2018.

/s/ N. Carlton Tilley, Jr.
Senior United States District Judge